

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SANDY ROUTT,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

CASE NO. C12-1307JLR

ORDER GRANTING MOTION
TO DISMISS

I. INTRODUCTION

Before the court is Defendant Amazon.com, Inc.'s ("Amazon") motion to dismiss Plaintiff Sandy Routt's First Amended Complaint ("FAC"). (Mot. (Dkt. # 22).) The court previously dismissed Ms. Routt's Complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. (11/30/12 Order (Dkt. # 18).) Ms. Routt amended her Complaint, and now Amazon once again moves to dismiss under Rule 12(b)(6). (*See* Mot.) After examining the FAC, the court concludes

1 that, just like the original Complaint, the FAC fails to state a claim upon which relief can
2 be granted. Thus, the court GRANTS Amazon's motion and DISMISSES the FAC.¹

3 II. BACKGROUND

4 Ms. Routt filed this copyright infringement action against Amazon on August 1,
5 2012. (*See* Compl. (Dkt. # 1).) She alleges copyright infringement by Amazon's
6 "Associates," who are operators of independent websites that earn advertising fees for
7 displaying links to Amazon's products on their websites. (11/30/12 Order at 2.)

8 Previously, the court dismissed Ms. Routt's Complaint because it stated no
9 plausible claims against Amazon even though it alleged acts of wrongdoing by Amazon's
10 Associates. (*See id.* at 5-9.) Ms. Routt's Complaint named only Amazon as Defendant,
11 not any of its Associates. (*See* Compl.) The court examined the operating agreement
12 between Amazon and its Associates, studied the relevant law, and concluded that neither
13 the agreement nor the facts alleged provided a basis for vicarious liability (or any other
14 kind of liability) against Amazon. (11/30/12 Order at 5-9.)

15 The FAC is different from the original Complaint in three relevant ways. First, it
16 incorporates into the Complaint many of the terms from Amazon's agreement with its
17 Associates. (1st Am. Compl. (Dkt. # 19) ¶¶ 11-19.) Second, attached to the FAC are
18 several documents that elaborate on that agreement. (*Id.* Exs. 4-7.) Third, the FAC

19
20 ¹ Both parties have requested oral argument. However, oral argument is not necessary if
21 it would not be helpful to the court and would not work prejudice on either party. *See Houston v.*
22 *Bryan*, 725 F.2d 516, 517-18 (9th Cir. 1984). Here, the court is familiar with the nuances of this
case, the issues have been thoroughly briefed, and oral argument would not be of assistance to
the court. Accordingly, the court denies the parties' request for oral argument.

1 Complaint and Amazon provided a copy for the court's review. (11/30/12 Order at 4.)
2 The court has already studied the Agreement and determined its legal effects; adding the
3 Agreement's terms to the FAC does nothing to convince the court it was not correct the
4 first time. (*See* 11/30/12 Order.)

5 Second, it does not change the court's analysis that the FAC contains several
6 documents elaborating on the Amazon Associate Agreement, including an "Associates
7 Program Operating Agreement" and a list of "Associates Program Excluded Products."
8 (*See* 1st Am. Compl. Exs. 4-7.) The court has reviewed these documents in detail and
9 concludes that they do not add anything substantive to the Amazon Associate Agreement
10 but rather simply provide more detail on how to implement that Agreement. As such, the
11 court's analysis does not change as a result of these attachments.

12 Finally, the two paragraphs of new factual information do not contain sufficient
13 factual matter such that they state a plausible claim for relief when added to the
14 allegations in the original Complaint. The allegations related to "agcku" merely provide
15 a concrete example of the behavior complained of generally in the rest of the complaint.
16 (*See* 1st Am. Compl. ¶ 20.) Thus, these allegations suffer from the same defects as the
17 other, more general allegations (*see* 11/30/12 Order)—that is, they do not provide any
18 new factual matter suggesting Amazon could be held vicariously liable for the
19 infringement of agcku or any other Associate. (*See* 1st Am. Compl. ¶ 20.) To the extent
20 these allegations allege direct liability, they make only threadbare, conclusory allegations
21 that Amazon "acted in concert with 'agcku' to establish and operate these websites."
22

1 (*Id.*) The court explained in its previous order that this is insufficient to survive a
2 12(b)(6) motion. (*See* 11/30/12 Order.)


3 The second paragraph of new facts does not help either. (*See* 1st Am. Compl. ¶ 21
4 (discussing Ms. Routt's "live chat" with Amazon).) The problem in this case is that Ms.
5 Routt has not alleged enough facts to establish that Amazon can be held liable for the
6 infringement of its Associates. (*See* 11/30/12 Order.) Ms. Routt's new allegation about
7 her "live chat" and Amazon's subsequent inaction might make Amazon look bad, but it is
8 not a fact that relates directly to any of the elements Ms. Routt must allege to state a
9 claim holding Amazon liable. Thus, it does not help Ms. Routt.

10 In sum, Ms. Routt's amendments do not change the court's analysis: the FAC,
11 like the original Complaint, fails to state a claim upon which relief can be granted.
12 Accordingly, the court GRANTS the motion to dismiss.

13 IV. CONCLUSION

14 For the foregoing reasons, the court GRANTS Amazon's motion to dismiss and
15 DISMISSES the FAC (Dkt. # 22).

16 Dated this 26th day of February, 2013.

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19 JAMES L. ROBART
United States District Judge
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